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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Ocean Garden Products Incorporated,

10 Plaintiff,

11 v.

12 Blessings Incorporated, et al.,

13 Defendants.
14

No. CV-18-00322-TUC-RM

Consolidated with:
No. CV-19-00284-TUC-RM

ORDER

15 Pending before the Court is Defendant David Mayorquin's Motion to Quash or
16 Modify Subpoena Duces Tecum or for a Protective Order. (Doc. 405.) Defendant
17 Abraham Mayorquin joins in the Motion. (Doc. 406.) Plaintiff Ocean Garden Products
18 Incorporated ("OG") opposes the Motion. (Doc. 410.)

19 **I. Background**

20 The subpoenas at issue were served on Wells Fargo Bank, N.A. ("Wells Fargo")
21 and J.P Morgan Chase Bank, N.A. ("Chase"). (Doc. 405-1 at 4, 11; *see also* Doc. 406-1
22 at 2.) They seek banking records for any accounts held by David and Abraham
23 Mayorquin (collectively, "Defendants") at Wells Fargo, and by Abraham Mayorquin at
24 Chase, for the period March 1, 2013 to the present. (Doc. 405-1 at 10, 17; *see also* Doc.
25 406-1 at 8.)¹

26 ¹ After the parties notified the Court of their dispute concerning the Wells Fargo and
27 Chase subpoenas, the Court issued an interim order specifying: "Upon receipt of any
28 documents produced by either Chase Bank or Wells Fargo Bank in response to the
Subpoenas, neither Plaintiff nor their counsel nor any party on their behalf shall review
the documents, which shall remain sealed if received, pending the Court's decision of the
Motions." (Doc. 401 at 2.)

1 Defendants move to quash or modify the subpoenas or, alternatively, for a
2 protective order. Defendants argue that the subpoenas are unduly burdensome and
3 overbroad because they encompass voluminous information and documents that are
4 irrelevant to any issue in this case. (Doc. 405 at 2, 7-8; Doc. 406 at 4-5.) They further
5 argue that the subpoenas seek documents that contain personal and private information.
6 (Doc. 405 at 2, 8-9; Doc. 406 at 4-5.) Citing Federal Rule of Civil Procedure 26(c) and
7 45(d), Defendants ask that the subpoenas be quashed outright for overbreadth or, at a
8 minimum, that their scope be limited to transfers from Blessings, Inc. (“Blessings”),
9 ADAB Ocean Harvest, S. De R.L. De C.V. (“ADAB Mexico”), or Pacific Ocean
10 Harvest, S. De R.L. De C.V. (“Pacific Ocean Harvest”) to David and Abraham
11 Mayorquin between 2014 and June 2018. (Doc. 405 at 2-3, 7-8; Doc. 406 at 7.) They
12 also ask that the subpoenaed records be redacted by defense counsel prior to disclosure to
13 OG (Doc. 405 at 9) or that they be reviewed by a neutral special master prior to
14 disclosure, at OG’s expense (Doc. 406 at 5-6).

15 In response, OG argues that Defendants lack standing under Rule 45 and have
16 failed to make the evidentiary showing required for a motion to quash under Rule 45 or a
17 protective order under Rule 26. (Doc. 410 at 6-8 (citing *Foltz v. State Farm Mut. Auto.*
18 *Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003)).) OG also argues that the protective order
19 previously issued by this Court sufficiently protects any confidential information. (*Id.* at
20 8-9.) As to relevance, OG argues that, under Arizona’s Uniform Fraudulent Transfer Act
21 (“UFTA”), A.R.S. § 44-1008(B), Defendants and their spouses may be liable for any
22 direct or indirect cash transfers they received from insiders such as Defendants Blessings,
23 ADAB Mexico, and Pacific Ocean Harvest, and that the subpoenaed banking records “are
24 indispensable to closing the loop on [Defendants’] transfers of Blessings’ cash down to
25 ADAB and Pacific in Mexico, and back up to joint accounts they share with” their
26 spouses. (*Id.* at 2.) OG further argues that all of Defendants’ banking transactions,
27 including purportedly personal transactions, are discoverable, because—for purposes of
28 liability and damages—OG needs to be able to distinguish between wage deposits from

1 insiders, non-wage deposits and necessities spending, and non-necessities spending. (*Id.*
 2 at 4 (citing *In re Titus*, 916 F.3d 293 (3d Cir. 2019).) OG also argues that banking
 3 records going back to 2013 are relevant because OG has been a creditor of Blessings and
 4 ADAB Mexico “since 2013, when [Defendants] fraudulently diverted OG’s \$1.5 million
 5 loan to Blessings down to [ADAB Mexico].” (*Id.* at 4-5.)

6 Both Defendants and OG request fee-shifting sanctions. (Doc. 405 at 9-10; Doc.
 7 410 at 3-4, 9.)

8 **II. Discussion**

9 **A. Motion to Quash**

10 The Court must, on timely motion, quash or modify a subpoena under Federal
 11 Rule of Civil Procedure 45(d) if the subpoena (1) does not allow a reasonable time for
 12 compliance; (2) “requires a person to comply beyond the geographical limits specified in
 13 Rule 45(c)”; (3) requires disclosure of privileged or otherwise protected information; or
 14 (4) “subjects a person to undue burden.” Fed. R. Civ. P. 45(d)(3)(A)(i)-(iv). In addition,
 15 the Court may, on motion of a “party or any person from whom discovery is sought,”
 16 issue a protective order for good cause to “protect a party or person from annoyance,
 17 embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1). Such
 18 a protective order may, in relevant part, forbid the disclosure or discovery, specify terms
 19 for it, or limit the scope of it to certain matters. Fed. R. Civ. P. 26(c)(1)(A)-(B), (D). The
 20 moving party “bears the burden, for each particular document it seeks to protect, of
 21 showing that specific prejudice or harm will result if no protective order is granted.”
 22 *Foltz*, 331 F.3d at 1130.

23 As this Court has previously held, Defendants do not have standing to argue that
 24 production of documents in response to subpoenas issued to third parties would be
 25 unduly burdensome. (Doc. 34 at 7.) Wells Fargo and Chase, rather than Defendants, are
 26 the entities subject to the burden of responding to the subpoenas, and neither Wells Fargo
 27 nor Chase has objected to the subpoenas. *See also Mount Hope Church v. Bash Back!*,
 28 705 F.3d 418, 428 (9th Cir. 2012) (“the ‘undue burden’ language is limited to harms

1 inflicted by complying with the subpoena”).

2 It is less clear whether Defendants have standing to challenge the subpoenas on
3 the grounds that they are overbroad and seek irrelevant, private information. *Compare*
4 *Wells Fargo & Co. v. ABD Ins.*, C 12-03856 PJH (DMR), 2012 WL 6115612, at *2 (N.D.
5 Cal. Dec. 10, 2012) (“A party’s objection that a subpoena to a nonparty seeks irrelevant
6 information [is] not [a] ground[] on which a party has standing to move to quash”),
7 *with In re Ashworth, Inc. Securities Litig.*, No. 99-CV-121, 2002 WL 33009225, at *2
8 (S.D. Cal. May 10, 2002) (finding defendants had standing to move to quash third-party
9 subpoenas on overbreadth grounds where the subpoenas sought information in which the
10 defendants asserted a proprietary interest). A party normally does not have standing to
11 seek to quash a subpoena issued to a nonparty unless it has ““some personal right or
12 privilege with regard to the documents sought.”” *Crispin v. Christian Audigier, Inc.*, 717
13 F. Supp. 2d 965, 973-74 (C.D. Cal. 2010) (quoting 9A Charles Wright & Arthur Miller,
14 Fed. Prac. & Proc. § 2459 (3d ed.)). The United States Supreme Court has held that
15 customers do not have a constitutionally protected privacy interest in their banking
16 records. *United States v. Miller*, 425 U.S. 435, 440-44 (1976). *Miller* was superseded in
17 part by the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3401, *et seq.*, which
18 allows customers to challenge *government* requests for bank records; however, nothing in
19 the Right to Financial Privacy Act “shields the records of a bank customer’s transactions
20 from discovery in a civil suit.” *Popoli v. Ft. Myers Lodge #1899 Loyal Order of Moose,*
21 *Inc.*, 2:15-CV-311-FtM-29CM, 2015 WL 9031929, at *4 (M.D. Fla. Dec. 16, 2015)
22 (internal quotation omitted). Courts are divided as to whether a party in a civil suit has a
23 privacy interest in its banking records sufficient to give it standing to move to quash a
24 subpoena served on a non-party financial institution. *Compare, e.g., Arias-Zeballos v.*
25 *Tan*, No. 06 Civ. 1268(GEL)(KN), 2007 WL 210112, at *1 (S.D.N.Y. Jan. 25, 2007)
26 (finding standing), *with Robertson v. Cartinhour*, No. AW-09-3436, 2010 WL 716221,
27 at *1-2 (D. Md. Feb. 23, 2010) (finding no standing).

28 Assuming Defendants have standing to challenge the subpoenas on the grounds

1 that they are overbroad and seek irrelevant information, the Court finds that Plaintiff has
2 sufficiently shown that the subpoenaed records are relevant to liability and damages on
3 Plaintiff's UFTA claims. *In re Titus*, relied upon by Plaintiff, finds that UFTA damages
4 are determined by distinguishing between fraudulent and non-fraudulent deposits, as well
5 as permissible and impermissible expenditures. 916 F.3d at 297, 301-05. Although *In re*
6 *Titus* analyzes Pennsylvania's UFTA, Defendants have not shown that damages are
7 measured differently under Arizona's UFTA. Accordingly, Plaintiff has sufficiently
8 shown that banking records of all deposits and expenditures are relevant for purposes of
9 UFTA liability and damages. Furthermore, Plaintiff alleges that Defendants
10 misappropriated money lent from OG to Blessings beginning in 2013, and thus records
11 dating back to 2013 are relevant. (*See, e.g.*, Doc. 416 at ¶¶ 72, 109-11.)

12 Assuming further that Defendants have standing to challenge the third-party
13 subpoenas on the grounds that they seek personal, confidential information, the Court
14 finds that any privacy concerns are adequately addressed by the Court's protective order.
15 *See In re Heritage Bond Litig.*, CV 02-1475-DT(RCX), 2004 WL 1970058, at *5 n.12
16 (C.D. Cal. July 23, 2004) (finding privacy interests in bank records adequately protected
17 by protective order and insufficient to prevent production). Defendants have not shown
18 that any privacy interests they may have in the banking records outweigh OG's need for
19 the records. *See A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 191 (C.D. Cal.
20 2006) (finding plaintiff's need for financial documents outweighed defendant's privacy
21 claim). Defendants argue that OG may use information gleaned from the subpoenaed
22 records in order to intimidate individuals or entities with whom Defendants associate.
23 (Doc. 406 at 5-6.) However, that concern can be addressed by an order requiring OG to
24 obtain leave of Court before contacting any individuals or entities identified as a result of
25 records disclosed in response to the subpoenas. Defendants have not shown that their
26 proposals—allowing Defendants to redact the records or requiring a special master to
27 review them—are necessary to protect any privacy interests they may have in the banking
28 records.

1 The Court will deny Defendants' Motion to Quash or Modify Subpoena Duces
2 Tecum or for a Protective Order, except to the extent that the Court will require the
3 subpoenaed records to be deemed attorneys-eyes-only under the Court's protective order
4 and will require OG to obtain leave of Court before contacting any individuals or entities
5 identified as a result of the subpoenaed records.

6 **B. Fee-Shifting Sanctions**

7 Rule 37(a)(5) applies to the award of expenses on a motion for protective order.
8 Fed. R. Civ. P. 26(c)(3). In addition, the Court has warned the parties that failure to
9 adequately meet and confer before bringing a discovery dispute to the Court's attention
10 will result in sanctions. (Doc 84 at 1 at n.1.)

11 Defendants argue that fee-shifting sanctions should be imposed against OG
12 because OG rejected an "eminently reasonable stipulation" that would have resolved this
13 dispute. (Doc. 405 at 9-10.) OG argues that fee-shifting sanctions should be imposed
14 against Defendants because they failed to fully engage in the meet-and-confer process
15 and unjustifiably failed to address their burden of proof on this Motion. (Doc. 410 at 9.)

16 The Court finds that Rule 37(a)(5)(C)—which pertains to a partially granted and
17 partially denied motion to compel—is most applicable to the present circumstances, in
18 that the Court is issuing a limited protective order but denying Defendants' requests to
19 quash the subpoenas, as well as Defendants' proposals to allow redaction of the banking
20 records or require review by a special master. Rule 37(a)(5)(C) allows the Court to
21 apportion the reasonable expenses of a Motion.

22 Defendants' position with respect to the Wells Fargo and Chase subpoenas was
23 not entirely without merit. Support exists for Defendants' assertion of a privacy interest
24 in their banking records. However, Defendants could have predicted the Court's ruling
25 that they lack standing to move to quash based on undue burden simply by reviewing the
26 Court's October 2018 Order (Doc. 34) resolving their previous Motion to Quash.
27 Furthermore, although the Court finds that counsel for David Mayorquin made
28 reasonable efforts to resolve this dispute through personal consultation, the record does

not support the same finding with respect to counsel for Abraham Mayorquin. Furthermore, Abraham Mayorquin did not file a certification, as required by Rule 26(c), that he “in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.” Fed. R. Civ. P. 26(c)(1).


After considering the positions taken by the parties with respect to the Wells Fargo and Chase subpoenas and the parties’ meet-and-confer efforts, the Court will require David Mayorquin to pay 25% of the costs incurred by OG in responding to the Motion, and will require Abraham Mayorquin to pay 50% of those costs.

IT IS ORDERED that the Motion to Quash or Modify Subpoena Duces Tecum or for a Protective Order (Doc. 405) is **granted in part and denied in part**, as follows:

1. Any records disclosed pursuant to the subpoenas at issue in the Motion shall be deemed attorneys-eyes-only under the Court’s protective order; and
2. OG must obtain leave of Court before contacting any person or entity that OG identifies as a result of the subpoenaed records.
3. The Motion is otherwise denied.

IT IS FURTHER ORDERED that David Mayorquin shall reimburse OG 25% of the reasonable expenses, including attorneys’ fees, incurred in responding to the Motion to Quash or Modify Subpoena Duces Tecum or for a Protective Order. Abraham Mayorquin shall reimburse OG 50% of its reasonable expenses, including attorneys’ fees, incurred in responding to the Motion. The parties shall attempt to reach a stipulation concerning the amount of expenses to be reimbursed. If the parties are unable to reach a stipulation, OG may file an appropriate motion.

Dated this 24th day of August, 2020.


 Honorable Rosemary Márquez
 United States District Judge